

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 55 OF 2016  
IN  
FIRST APPEAL NO. 796 OF 1990**

The Regional Director,  
Employees State Insurance Corporation .... Applicant.  
V/s.  
The National Rayon Corporation Ltd & Anr. ... Respondents

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Mr. R. M. Jaykar i/b M/s. Jayakars for the applicant.  
Mr. Abhishek Sawant with L.A. Ruhans with Sujit Suryawanshi i/b Vigil  
Juris for the respondent no.1

**CORAM : K. K. TATED, J.  
DATED : 18/01/2016**

**PC.:**

. Heard learned Counsel for the parties.

2 This application is preferred by the Regional Director, Employees State Insurance Corporation for condonation of 13 years and 218 days delay in filing Civil Application and for restoration of First Appeal No. 796 of 1990 which was dismissed in view of conditional order dated 08.02.2002 passed by this Court for non filing of private paper book.

3 The learned Counsel for the Applicant submits that on 08.02.2002, this Court passed common order in several matters directing the parties to file their private paper book within stipulated time i.e. 8 weeks. He submits that the Advocate's clerk inadvertently failed to notice the First Appeal No. 796 of 1990 in that group and

hence the Appellant's Advocate could not remain present on 08.02.2002, when the impugned order passed by this Court. Therefore, private paper book remained to file within stipulated time as directed by this Court. He submits that since, matter did not come up on board for final hearing for long time, the Appellant's Advocate made inquiry in the First Appeal department in June, 2015 and learnt that the matter was dismissed by conditional order dated 08.02.2002. Thereafter, the Advocate for the applicant immediately applied for certified copy on 05.06.2015. The certified copy was ready for delivery on 20.07.2015 and same was collected on 30.07.2015 and filed present Civil Application on 23.09.2015.

4 The learned Counsel for the Applicant submits that as soon as they learnt about the dismissal of the First Appeal in the month of June, 2015, immediately, they applied for certified copy and filed the present Civil Application. He submits that from the date of knowledge, if the delay is calculated, the same may not be more than 2 months, because, they received the certified copy on 30.07.2015. He submits that they have good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in complying the conditional order dated 08.02.2002 and allow to file private paper book. He submits that private paper book is ready. He submits that considering the reasons disclosed in the Civil Application, particularly in paragraphs 4 and 5, this Hon'ble Court be pleased to allow the Civil Application and matter to be heard on its own merits.

5 On the other hand, the learned Counsel for the Respondent No.1 vehemently opposed the present Civil Application. They filed their affidavit-in-reply dated 27.11.2015. He submits that First Appeal No. 796 of 1990 was admitted by this Court on 17.01.1991. After 13 years the applicant preferred the present Civil Application for restoration of First Appeal, which was dismissed in view of conditional order dated 08.02.2002. He submits that though the applicant in paragraph 4 of the Civil Application stated that when they made inquiry to First Appeal department in June 2015, and learnt that the matter was dismissed in view of conditional order dated 08.02.2002, applicant failed to file Civil Application immediately. He submits that they filed the present Civil Application on 23.09.2015 i.e. after two months from the date of knowledge.

6 The learned Counsel for the Respondent submits that though the applicant in paragraph 4 of Civil Application stated that because of mistake on the part of their court clerk, no one appeared on behalf of Applicant when the common order was passed by this Court, applicant failed to disclose the name of the said clerk and/or his affidavit in support of their contention. He submits that applicant failed to disclose the sufficient cause for condonation of inordinate delay of more than 13 years. He submits that if after more than 13 years, this Court allowed the present Civil Application, irreparable loss and injury will be caused to the Respondent. He submits that in view of conditional order dated 08.02.2002, valuable rights are created in favour of Respondent. Those rights should not be withdrawn without sufficient cause. Hence, there is no substance in the present Civil Application and same to be

dismissed with costs.

7 I heard both the sides at length. Admittedly, there is delay of more than 13 years in filing the present Civil Application for restoration of First Appeal, which was stands dismissed in view of conditional order dated 08.02.2002 for non filing of private paper book. Though, the applicant in paragraph 4 of the Civil Application stated that because of mistake on the part of court clerk, no one remained present before the court when the order was passed on 08.02.2002, the applicant failed to disclose the name of the said clerk. Not only that, the applicant failed to file the affidavit of said clerk in support of their contention. Nowhere, it is explained by the applicant under which circumstances they had made inquiry in the First Appeal department in the month of June, 2015 only, because the matter was admitted by this court on 17.01.1991. From the date of admission till 2015, neither applicant nor their Advocate made any inquiry in the Department why the matter is pending for hearing and final disposal. This itself shows that the applicant failed to disclose sufficient cause for condonation of inordinate delay.

8 The Apex Court in the matter of **Esha Bhattacharajee Vs. Managing Committee of Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay be rejected.

9 The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown,

delay should not be condoned.

10 The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

11 The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

12 Considering the submissions made by the learned Counsel for the applicant, averments made in Civil Application particularly in paragraphs 4, 5 and 6 and law laid down by the Apex Court as stated hereinabove, I am of the opinion that applicant failed to disclose the sufficient cause for condonation of more than 13 years in preferring the present Civil Application for restoration of First Appeal which was dismissed for non compliance of the conditional order dated 08.02.2002.

13 Civil Application stands rejected.

**(K.K.TATED, J.)**